

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,
: CR-17-464
: (JS)
-against- : United States Courthouse
: Central Islip, New York
MURIEL BESCOND,
: December 17, 2018
Defendant. 11 a.m.
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TRANSCRIPT OF MOTION CONFERENCE
BEFORE THE HONORABLE JOANNA SEYBERT
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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CRIMINAL DIVISION, FRAUD SECTION
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Proceedings recorded by mechanical stenography.
Transcript produced by CAT.

Paul J. Lombardi, RMR, FCRR
US District Court Reporter

1 THE CLERK: For motion conference US v Muriel
 2 Bescond. Your appearances, please.
 3 MR. DUREE: Good morning, your Honor. Tim Duree
 4 and Mr. Amatruda for the government.
 5 THE COURT: Good morning.
 6 And you are Mr. Amatruda?
 7 MR. AMATRUDA: I am Mr. Amatruda. I normally
 8 work out of the Brooklyn office.
 9 And Mr. Duree is with the Department of Justice
 10 Fraud Division.
 11 THE COURT: Yes.
 12 And for the defendants.
 13 MR. SHTASEL: Good morning, your Honor.
 14 Laurence Shtasel from Blank Rome for defendant Muriel
 15 Bescond.
 16 THE COURT: Nicer to see you in this case,
 17 Mr. Shtasel.
 18 And also Mr. Lauren Cohen-Tanugi.
 19 MR. COHEN-TANUGI: Good morning, your Honor.
 20 Laurent Cohen-Tanugi, for Ms. Bescond.
 21 THE COURT: How are things going over in Paris?
 22 MR. COHEN-TANUGI: Better.
 23 THE COURT: Hopefully it will subside and
 24 everybody will be able to enjoy the marvelous city there.
 25 MR. COHEN-TANUGI: Thank you.

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1 THE COURT: My recollection is that Danielle
 2 Sindzingre did not appear so you are representing solely
 3 Ms. Bescond.
 4 MR. SHTASEL: That's correct, your Honor.
 5 THE COURT: Essentially Ms. Sindzingre and
 6 Ms. Bescond were indicted for manipulating the London
 7 Inter-bank Offered Rate, LIBOR, and Ms. Bescond has filed
 8 these two motions that you gentlemen have submitted, one
 9 to dismiss the indictment and that's based on a Fifth
 10 Amendment due process argument and statute of limitations
 11 issue, and the second motion that you brought is on
 12 impermissible selective prosecution since
 13 similarly-situated males could have been prosecuted in
 14 this case but were not.
 15 The United States has responded to the motions,
 16 principally arguing that I should not decide them under
 17 the fugitive disentitlement doctrine. You prepared a
 18 bench memo here and it deals with the leading cases on
 19 fugitive disentitlement, due process, statute of
 20 limitations and selective prosecution.
 21 If you don't mind presenting arguments on the
 22 selective prosecution in that I believe you are claiming
 23 the selective prosecution was done because the two female
 24 defendants were indicted and the higher up males were not.
 25 MR. SHTASEL: That's essentially correct, your

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1 Honor.
 2 THE COURT: Then on the selective prosecution
 3 argument the government says, look, there are companion
 4 cases and we have indicted plenty of males.
 5 Is there anything further I have to know about
 6 this that would require any briefing? I think it's pretty
 7 straightforward.
 8 MR. SHTASEL: I'd like to comment on that if you
 9 would like to hear it now or -- I didn't know if you
 10 wanted to go in a particular order.
 11 THE COURT: That's the one that kind of jumped
 12 out at me.
 13 If you want to present your arguments with
 14 respect to the remaining three issues you have that's
 15 fine.
 16 MR. SHTASEL: Great.
 17 THE COURT: In other words, I'm not seeing a
 18 whole lot there.
 19 MR. SHTASEL: Your Honor, first of all, as you
 20 know, there are two prongs that the defendant seeking to
 21 move for dismissal based on selective prosecution has to
 22 meet, and if those prongs are met, then the government has
 23 the burden of demonstrating that there was no selective
 24 prosecution.
 25 We believe we have satisfied those prongs in

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1 this respect. We have here with respect to just the bank
 2 Societe Generale a massive investigation took place over
 3 many years that ultimately led the government to enter
 4 into a deferred prosecution agreement with the bank with
 5 regard to three separate schemes, and what we have
 6 demonstrated in our brief and in an attachment, in Exhibit
 7 F.
 8 THE COURT: You have a chart.
 9 MR. SHTASEL: A chart that shows with respect to
 10 the entirety of the investigation that spanned three
 11 separate schemes, one of which is the scheme that
 12 Ms. Bescond allegedly participated in.
 13 You have many, many men whom the government
 14 admits in its own submissions to the court were
 15 participants, and more than just participants, that the
 16 senior male executives of the bank, called the general
 17 directorate actually in the case of the scheme Ms. Bescond
 18 is alleged to have been a participant in, directed that
 19 very activity.
 20 So when we look at it, we don't have a situation
 21 like in many cases. This is unusual because we have the
 22 government's own blueprint, if you will, of this
 23 prosecution and it demonstrates that there were
 24 similarly-situated males, which is the test, were there
 25 similarly-situated males who were not prosecuted and only

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1 a protected class in this case women, who were.
 2 And what we did, if your Honor, and I handed
 3 this to the government's lawyers this morning, I wanted to
 4 just hand up a subset of the chart that we previously
 5 presented, if I may approach.

6 THE COURT: Sure.

7 MR. SHTASEL: I wanted to mark this as
 8 Defense Exhibit 1.

9 Your Honor, what this is is if we simply focus
 10 on the scheme that we refer to as the LIBOR stigma scheme,
 11 this is a subset of the big chart, but what you can see is
 12 this is an organization chart that shows you have the CEO
 13 at the top, then you have several layers, including the
 14 deputy chief executive officer, then you have the business
 15 units, the SCIB, which is corporate investment and
 16 banking, head of global markets, deputy head of global
 17 markets and below that you get to the two defendants in
 18 this case in green. What you see is all the individuals
 19 in yellow share the following in common.

20 The government contends in its own submissions
 21 to the court that they were participants in the scheme and
 22 they are all male. So we look at that and we say, what
 23 other explanation is there? The burden certainly shifts
 24 to the government at that point to explain. The only
 25 explanation that the government gives in its response, it

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1 doesn't address in any way the allegations that it made in
 2 its own submissions with the DPA, the deferred prosecution
 3 agreement, it doesn't address any aspect of this
 4 investigation and this alleged scheme.

5 It simply says in other cases. They are not
 6 ancillary cases.

7 THE COURT: Companion cases.

8 MR. SHTASEL: They are not companion cases at
 9 all.

10 They involve totally different banks and totally
 11 different theories of prosecution. In all the other LIBOR
 12 cases we are aware of and that the government references
 13 they were LIBOR cases where the core misconduct was aimed
 14 at financial benefit, and specifically involving
 15 derivative traders and using rates to manipulate specific
 16 transactions that resulted in financial gain to the bank
 17 or its traders.

18 So we are not suggesting, your Honor, that the
 19 government has never prosecuted a man. That's obviously a
 20 silly proposition. The question is were there
 21 similarly-situated men who weren't prosecuted to the
 22 exclusion of the two women, and the many that the
 23 government refers to in other cases involving other banks
 24 have nothing to do with this investigation into
 25 Societe Generale that led into a billion dollar settlement

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1 with the government.

2 It's really the unit of prosecution here that's
 3 relevant here is the bank and this investigation because
 4 most of the selective prosecution cases involve, for
 5 example, in the drug cases where you are looking at
 6 statistical analyses, are African-Americans prosecuted to
 7 a greater degree for crack cocaine than Caucasian
 8 Americans and you have to make inferences and
 9 extrapolations.

10 Here all you have to do is read the DPA and the
 11 CFTC's order that lays out the entire prosecution and
 12 says, these senior males directed these subordinate two
 13 women to do these things and assuming that's all true,
 14 then why are the women the only ones prosecuted and, you
 15 know, a dozen men aren't.

16 THE COURT: You piqued my curiosity so let me
 17 ask the government what their response is to that.

18 MR. DUREE: Good morning, your Honor.

19 THE COURT: Good morning.

20 MR. DUREE: The defense's allegations are just
 21 completely absolutely bogus.

22 There's absolutely nothing to support it and,
 23 your Honor, it feels respectfully that defense counsel is
 24 simply trying to create a sideshow here. Let me be really
 25 clear about why Ms. Bescond is being prosecuted. She's

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1 being prosecuted because I have evidence against her
 2 that -- beyond a reasonable doubt that she committed the
 3 crimes charged, the same for her codefendant. That's it.

4 The arguments that they are making aren't based
 5 in any type of fact and really aren't based in logic.
 6 Defense counsel and I have spent significant amount of
 7 time together talking about the evidence in this case. I
 8 have shared some of the evidence. They know my theories.
 9 They know enough to know that this is a disingenuous
 10 proposition, that the fact is really quite simple.

11 Ms. Bescond, as I said earlier, Ms. Bescond is
 12 prosecuted -- is being prosecuted because the evidence
 13 against her proves her guilt beyond a reasonable doubt,
 14 nothing more and nothing less. She's being prosecuted not
 15 because she's a woman, but because she was the head of the
 16 Paris treasury desk which was the group within
 17 Societe Generale that was charged with submitting the
 18 LIBOR rates. Her codefendant is her boss, the global head
 19 of treasury. She's likewise being prosecuted not because
 20 she's a woman but because she's the global head of
 21 treasury.

22 If defense counsel believes there is evidence
 23 that I'm missing that would allow me to prosecute people
 24 above Ms. Bescond, I'm very glad to do it and I will make
 25 the same opportunity to them that I made last year, that I

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1 made repeatedly, if their client has anything that can
2 help me get to higher levels, I want to hear it and I'm
3 happy to go there. Bring her to me. Have her present
4 that evidence to me, and we'll see if we can together get
5 to the point where we can prosecute someone else. If we
6 can create evidence, if we can find evidence beyond a
7 reasonable doubt, maybe we will, and maybe we won't.

8 But instead of going that route, instead of
9 being honest about the evidence in this case, defense
10 counsel is trying to create some completely spurious
11 argument and it feels -- your Honor, if I may say so,
12 Ms. Bescond isn't in the courtroom today. She's not even
13 around here. She's a thousand miles away in France.

14 It feels to me that defense counsel is just
15 taking a potshot knowing that if it doesn't land,
16 defendant's got nothing to lose because she's still
17 hanging out in France and maybe she will get lucky.

18 THE COURT: What the defendant is saying you
19 have given deferred prosecution agreements to her higher
20 ups.

21 MR. DUREE: I did not.

22 THE COURT: I think that was deferred
23 prosecution agreements that you referenced.

24 MR. DUREE: There was a deferred prosecution
25 agreement with the bank itself, with the corporate

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1 institution, Societe Generale.

2 But the people above her and defense counsel --
3 because we sat down and talked about this at length for
4 hours -- knows that above Ms. Bescond are individuals such
5 as Didier Valet and Michel Peretie, two higher up
6 executives that were in charge in Societe Generale at the
7 time, and they have not received deferred prosecutions or
8 anything like that.

9 THE COURT: And they haven't been indicted.

10 MR. DUREE: They haven't been indicted.

11 But again, your Honor, I indict people in this
12 case, same as every other case I do, because the evidence
13 proved beyond a reasonable doubt, that's it.

14 THE COURT: I'll allow you a brief response and
15 then we'll get into the main issues.

16 MR. SHTASEL: Thank you, because Mr. Duree, I
17 think, completely misunderstands the concept of select
18 prosecution.

19 Let us assume for the moment that Ms. Bescond is
20 guilty beyond more than a reasonable doubt. The standard
21 in all the selective prosecution agreements -- the
22 selective prosecution cases, the standard is not does the
23 government have evidence against a particular defendant.
24 Let's assume that to be true. The standard is has the
25 government failed to indict, charge, or otherwise punish

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1 those who are similarly situated. So Mr. Duree's
2 presentation that, oh, I have lots of evidence and I
3 shared that with the defense is completely irrelevant.

4 What he doesn't address is why weren't any other
5 people in a case in an investigation where the government
6 has said within its own documents, it says in its press
7 releases, in its letter to the French government in April
8 2005, all of these are exhibits to our motion, in the CFTC
9 order, in the deferred prosecution agreement, everyone
10 says members of the general directorate in the time itself
11 it says that members of the general directorate were
12 concerned that the bank's submissions were too low. They
13 went and told Ms. Bescond's boss, Daniel Sindzingre, they
14 told her lower the rates. That's in the indictment,
15 paragraph 18.

16 Then supposedly she told Ms. Bescond -- it
17 trickled down and eventually the rates went up. The
18 question is why hasn't the government answered the basic
19 question? You said that they directed it. You said they
20 were participants. You said in part of all your
21 agreements with the bank they didn't enter into any
22 agreements with any male individuals. Everyone has
23 escaped prosecution.

24 And, yet, everyone is alleged to have been an
25 equal if not greater participant. That's the burden the

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1 government hasn't met and I will say this, your Honor,
2 even if your Honor concludes that what we established
3 doesn't satisfy both of the prongs, which we think it
4 clearly does, the Napper case in this district says that
5 if we have made a credible showing, all we have to do is
6 make a credible showing, we are entitled to discovery to
7 see what it is that the government -- caused the
8 government not to prosecute people it said were equally if
9 not more guilty.

10 So when Mr. Duree says we sat down, Mr. Duree
11 refused to give us any discovery other than about 16
12 e-mails in this case that had nothing to do with others,
13 but had to do with Ms. Bescond. As you see in the statute
14 of limitations argument they refused to give us the
15 letters of request to the French authorities that
16 supposedly support their tolling agreement or tolling
17 order. They have refused -- based upon what we feel is a
18 completely incorrect characterization of Ms. Bescond as a
19 legal fugitive, they have refused to give us anything.

20 At a minimum we should be entitled to discovery
21 on an issue that's really quite unusual where we have this
22 complete blueprint of the government's investigation as to
23 senior male officials at the bank, yet none were
24 prosecuted.

25 THE COURT: I think I have heard enough on that.

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1 Let's go into what I consider the actual main
2 arguments here, the fugitive from justice definition,
3 Black's Law Dictionary, and the issue of civil forfeiture
4 and what actually constitutes a fugitive disentitlement
5 and it's an equitable doctrine and I certainly can apply
6 it.

7 There are four independent justifications for
8 disentitlement: (1) assuring the enforceability of a
9 decision against a fugitive; (2) imposing a penalty for
10 flouting the judicial process; (3) discouraging flights
11 from justice to promote efficient operation of the courts;
12 and (4) avoiding prejudice to the other side engendered by
13 a defendant's flight. *Hanson v. Phillips*, 442 F.3d 789,
14 795 (2d Cir. 2006), a Second Circuit case from 2006.

15 Now, your main case is this **Hijazi** case and you
16 cite to the Seventh Circuit case continuously. Do you
17 want to expand on that a little bit?

18 MR. SHTASEL: Sure, your Honor.

19 First of all, our lead case is the Second
20 Circuit case of **Empire Blue Cross v Finkelstein** and that
21 is a case that the government simply ignores. The first
22 issue here, is Ms. Bescond a fugitive.

23 THE COURT: Right.

24 MR. SHTASEL: If she's not a fugitive, then we
25 don't even need to go into those four factors. If she is

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1 deemed to be a fugitive, the court still has discretion to
2 permit her to advance arguments even in her absence.

3 Let me focus on the Second Circuit case. In
4 **Finkelstein**, the court specifically made reference to the
5 common law definition of fugitive, and noted that it's
6 what you would expect. It's a person who, having
7 committed a crime, flees the jurisdiction or hides away
8 within the jurisdiction and can't be found. In the
9 **Collazos** case, a later case, another Second Circuit case
10 from 2004, again the Second Circuit cited **Finkelstein** for
11 the common law definition of fugitive.

12 There is no question that under the most
13 expansive understanding of the common law definition
14 applied by the Second Circuit, that Ms. Bescond is not a
15 fugitive. She is a French citizen. She has a family, two
16 sons, 19 and 21, a husband. She has lived her entire life
17 in France. She worked her entire life in France. She has
18 no connection at all to the United States.

19 During a time period of the alleged indictment
20 she was in France, for the next six years before from the
21 time that the crimes were allegedly committed to the time
22 the indictment was returned she was in France the entire
23 time. So she has never fled and has never, quote, failed
24 to return because she was never here in the first place.

25 The government treats this as if this is just a routine

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1 domestic defendant.

2 There is no legal compulsion that Ms. Bescond
3 has to appear in this court.

4 THE COURT: No. She's a French citizen.

5 MR. SHTASEL: Right.

6 THE COURT: But you seek an extraordinary remedy
7 in that you want discovery.

8 You want a variety of other things and you seek
9 to dismiss the indictment which is quite a lift, if you
10 will excuse my vernacular.

11 MR. SHTASEL: Your Honor, I don't think it is a
12 lift because there is ample authority that says absent
13 foreign defendants have the right to advance
14 constitutional arguments in cases.

15 And I would in that regard draw your attention
16 to the **Hijazi** case for the reasons that it's an extremely
17 well-reasoned opinion that deals with facts that are
18 almost identical to ours. You had a foreign defendant, a
19 Kuwaiti resident, Lebanese national who was alleged to
20 have engaged in contractor fraud with a US Government
21 contractor, so the facts are even worse in terms of a
22 connection to the United States which we'll get to.

23 There was no extradition treaty, and the judge
24 found that -- the Seventh Circuit found that because the
25 defendant was under no obligation that the defendant

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1 shouldn't have to pay an enormous penalty to advance
2 challenges to the reach of the statute in the first place,
3 and those penalties being, as you know, your Honor, if the
4 government says, well, if Ms. Bescond wants to have her
5 arguments heard, why doesn't she just come to the
6 United States?

7 If she comes to the United States, she leaves
8 her family, she leaves her employment opportunities, and
9 she will certainly be detained. The government's not
10 going to say, okay, now that you are here why don't you go
11 back to France pending trial. She will be detained for a
12 lengthy period of time and all of those are burdens that
13 apply in the foreign context. I want to read one quote
14 from the **Hijazi** case because I think it's completely
15 relevant and not in any way inconsistent with Second
16 Circuit law. The court said:

17 **Hijazi's** case does not present a simple question
18 of the scope of an accused person's right to a
19 prearrest decision. It involves instead the right of
20 a foreign defendant who did not flee the United States to
21 have a threshold question related to -- relation to his
22 duty to appear at all resolved within a reasonable time.
23 A nonfugitive defendant is simply not -- I'm sorry -- is
24 simply in a different position from that of a domestic
25 defendant seeking more ordinary relief before arraignment.

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1 Your Honor, the consequences of the government's
2 argument would be that the US Government can indict
3 anybody, anywhere in the world, and in order to be
4 relieved of the burdens of being indicted, that person, no
5 matter where that person is in the world, has to travel to
6 the United States and be detained in order to challenge
7 whether the government has the right to file that
8 indictment in the first place.

9 That's not the law. It's not consistent with
10 Supreme Court authority. It's not consistent with
11 Second Circuit authority, and it certainly shouldn't apply
12 here.

13 THE COURT: You are basically saying that when
14 you have a criminal statute that's being applied
15 domestically or extraterritorially, a due process nexus
16 analysis is required.

17 Now, do you concede that the government's
18 argument that this case involves a domestic application of
19 the statute?

20 MR. SHTASEL: No.

21 THE COURT: You don't concede that.

22 MR. SHTASEL: No.

23 THE COURT: All right.

24 MR. SHTASEL: First of all, the government takes
25 position that it's not clear or the government doesn't

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1 have to decide whether the Commodities and Exchange Act,
2 the CEA that's charged here, is a statute that can be
3 applied extraterritorially. Our position is it's
4 absolutely clear that it can't because there is nothing in
5 the statute that says it can. That's what **RJR Nabisco** and
6 **Morrison** say.

7 The government then says, oh, but what we are
8 trying to do is apply it domestically. We don't believe
9 that there is support for that, but the court doesn't need
10 to decide that because the government's position, which is
11 completely unfounded, and completely inconsistent with the
12 **Al Kassar** case in the Second Circuit, the government says
13 if you are applying a statute domestically, you don't have
14 to engage in any --

15 THE COURT: Nexus.

16 MR. SHTASEL: Right.

17 Completely false. First of all, there is no
18 support for it. What they do is they falsely cite
19 **Al Kassar** for that proposition. **Al Kassar** says nothing
20 about whether a due process analysis is required in a
21 domestic case because it's focusing on an extraterritorial
22 case, but when you think about it there would be no reason
23 to say to a defendant you have due process rights, you are
24 a foreign defendant.

25 If a statute's being applied extraterritorially,

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1 you have the due process rights. If it's applied
2 domestically because the, quote, focus, they don't. It
3 makes no sense. In the extraterritorial context it's an
4 added layer of protection. It says even if Congress
5 authorized the US Attorney's Office or the DOJ to enforce
6 a criminal statute against a foreign person, explicitly,
7 that person still has an additional layer of protection.
8 They have to have a sufficient nexus.

9 And that nexus is completely missing here,
10 because the Second Circuit has said that the proper test
11 for nexus is what was the defendant's aim, what does the
12 indictment allege that the defendant's aim was? And,
13 again, the government, somewhat shockingly, ignores the
14 test completely, never addresses it, because it's clear
15 from the indictment that we have this unusual case where
16 the aim had nothing to do with harming US interests. It
17 has to do with, allegedly, taking steps to protect and
18 promote the bank's reputation, had nothing to do with
19 financial transactions.

20 So you look at that aim and you say that's not
21 something that provides a sufficient nexus between Muriel
22 Bescond in France attempting to, quote, harm the
23 United States or the United States' interests.

24 THE COURT: Let's assume, as you are arguing
25 here, nexus is required, and it was not the defendant's

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1 aim to even cause harm in the United States to its
2 citizens or interests.

3 The Second Circuit has favorably quoted the DC
4 Circuit for the proposition that **Al Kassar**'s aim test only
5 tells us what -- when a nexus exists, not when it's
6 absent, and I cite to **United States v Epskamp**, 822 F.3d,
7 134 at 168, a Second Circuit 2016 case and that quotes
8 **United States v Ali**, 718 F.3d, 929 at 946, Fed. Circuit,
9 DC Circuit 2013. And according to **Al Kassar**, due process
10 requires the application of a criminal statute, and it
11 basically would not be arbitrary or fundamentally unfair.

12 Here the indictment alleges that the defendant
13 submitted artificially low US dollar LIBOR interest rate
14 estimates, knowing that the submissions would be false,
15 got that in the indictment straight out. It also alleges
16 that the scheme artificially reduced the US dollar LIBOR
17 fix and affected the price of the Euro dollar future
18 contracts which were traded obviously in the Chicago
19 Mercantile Exchange in Chicago, Illinois.

20 Now, is that arbitrary or fundamentally unfair
21 to prosecute a defendant in the United States? What's so
22 fundamentally unfair here when you are talking due process
23 and all the other standards?

24 MR. SHTASEL: The fundamental unfairness turns
25 on the difference between aim and effects, aim and

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1 effects.

2 The **Al Kassar** case specifically said nexus is
3 determined by the aims of the conspiracy, not its effects.
4 What you just described, your Honor, respectfully, are
5 potentially the, quote, effects of the conspiracy. But
6 the aim of the conspiracy was not to manipulate the
7 trading rates in the United States. The aim is set out
8 quite clearly in paragraph 14 of the indictment. It said
9 that the conduct was done, quote:

10 So that it would appear to the public that
11 Societe Generale was able to borrow money at lower
12 interest rates than the rates that were actually available
13 to the bank. The purpose of the scheme was to avoid
14 anticipated reputational harm to Societe Generale, had the
15 bank submitted honest estimates of its borrowing rates
16 which rates were published through the LIBOR process.

17 THE COURT: That's a straight effect. Anybody
18 could figure out that would be the effect, if you are
19 consistently claiming and saying you could get lower rates
20 and you know you can't, that's going to affect your
21 reputation.

22 You are lying.

23 MR. SHTASEL: No. No. No.

24 The effect that the government is trying to
25 argue, oh, this affected rates on the Chicago Mercantile,

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1 that's fine, but that's not the test. The test isn't what
2 the effect would be. The test is what was the aim, what
3 was the purpose.

4 The courts say over and over again, the aim here
5 as alleged in the indictment, I'm only going by the
6 indictment, was to make it appear to the world that the
7 bank's borrowing rates were lower than they were.

8 THE COURT: Right.

9 MR. SHTASEL: As a comparison to other banks.

10 THE COURT: Wasn't that the aim?

11 MR. SHTASEL: That's what the government says
12 that was the aim.

13 THE COURT: Well, that's what's in the
14 indictment. That's what they are claiming the aim is.

15 Not the effect, it obviously had some effect
16 because that's why they are indicting.

17 MR. SHTASEL: **Al Kassar** says for due process
18 purpose you have to split those two. You have to split
19 those two.

20 It doesn't matter according to Second Circuit
21 law if the effect had some bearing on the United States.
22 It was, was it the alleged purpose to harm the
23 United States or its interests, and that's a critical
24 distinction to make. I'll give you an example. In the
25 **Sidorenko** case you had foreign actors who were accused

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1 again of bribing -- engaging in a scheme to -- that
2 affected a united nations agency that was located in
3 Canada. That agency, though, was funded 25 percent by the
4 United States and so the government argued, well, that had
5 an impact on the United States.

6 What the court held was it may have had an
7 impact on the United States, but it was never the purpose
8 of the alleged conspirators to harm the United States. So
9 you look to the aim as alleged by the government. The
10 government could have said Muriel Bescond and Societe
11 Generale set out to manipulate rates to harm US markets.

12 They never say that. They say repeatedly, not
13 only in the indictment, but in their letters to the French
14 authorities, in the other submissions we have described,
15 the aim was always the same: to avoid stigma, to avoid
16 reputational concerns that the bank had that they would be
17 perceived as being less creditworthy than other banks.

18 Now, is that a crime? It may well be. Did it
19 have effects in the United States? Possibly, although we
20 have serious doubts as to whether it did. But assume for
21 the moment both of those things are true. From a due
22 process standpoint, as **Al Kassar** set out and cases after
23 **Al Kassar**, like **Mostafa**, all the cases say we look to what
24 the government contended was the aim of the defendant and
25 here the aim was not to harm the United States, was not

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1 the harm US interests, was not to harm US individuals. If
2 that was the effect, so be it, if they have the right to
3 try this case they can prove that.

4 But they -- if they don't have sufficient due
5 process to hail this defendant, remember that's what we
6 are talking about, is this something that justifies
7 hailing someone from France to come to the United States
8 because the aim alleged was to prop up the bank's
9 reputation, not to harm US interests.

10 THE COURT: I think you are going to have
11 several aims, but let me hear the response from the
12 government on that.

13 MR. DUREE: Thank you, your Honor.

14 THE COURT: Tell me all about the **Hayes** case.

15 MR. DUREE: I'll tell you all you want to know,
16 your Honor.

17 Your Honor, the defendant's motion must fail.
18 It's just squarely completely wrong on every point of law,
19 and it's really quite simple. Defense counsel has tried
20 to argue quite a bit without much case law backing to
21 repackage my case, to make assumptions about what we were
22 thinking, what we were doing. None of that, as you know,
23 is germane to this motion to dismiss. The pertinent
24 issues are very few and very simple.

25 The first is, is this defendant a fugitive? The

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1 case law is clear that she is, and that defense efforts to
2 package the fugitive case or otherwise are misguided.

3 The second is, being a fugitive, do the four
4 policy factors of fugitive disentitlement apply here. As
5 I'll explain to you, they do.

6 The third is that even if we get past that, we
7 should stop there, but even if we get past there and
8 consider the merits, the main issue is what due process
9 rights does the defendant have here. I agree that the
10 defendant has due process rights, of course, but the
11 defendant only has due process rights that actually exist,
12 and there is no existing due process right to avoid
13 prosecution unless the government can show pretrial in its
14 indictment that your aim was to harm the United States.
15 That just isn't a due process right. So without that due
16 process right, their claims fail. There is nothing to
17 fall back on.

18 If I may, I'd like to dig a little deeper into
19 each one.

20 As to being a fugitive, the defendant is a
21 fugitive because she is evading arrest and knowingly
22 refusing to submit to the jurisdiction of this court. She
23 knows this case is out there. She knows there are arrest
24 warrants for her internationally if she leaves France and
25 she's choosing not to come here. By evading arrest, she's

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1 a fugitive. The case law is clear on that, that's
2 **United States v Eng**, 951 F.2d at 464 is the pinpoint cite,
3 **United States v Blanco**, 861 F.2d 773 at 779. Those cases
4 explain a fugitive is a person who actively resists coming
5 to the US from abroad to face charges, just like we have
6 here.

7 Defense is trying to say, but, no, that can't
8 be. She had to actually flee from the United States,
9 physically run from the United States to be a fugitive.
10 The courts have not been very receptive to that line of
11 argument. **Miller**, a case out of the Western District of
12 New York, calls a distinction a meaningless distinction
13 and in **Hayes**, which is 118 F.Supp 3d at 620, the court
14 mentioned that courts can't be bound by, quote,
15 meaningless semantics like this that limit fugitive status
16 to fleeing or failing to return when dealing with
17 international criminal defendants who allegedly violated
18 United States law from abroad.

19 The defense tries to brush all this aside and
20 tries to rely very heavily on the **Finkelstein** case, but
21 that case does not give them the support that they want.
22 In **Finkelstein** the court says, quote:

23 A fugitive from justice has been defined as a
24 person who, having committed a crime, flees the US.

25 They mention that as Black Law's Dictionary

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1 definition at the time what fugitive is. This isn't a
2 binding Second Circuit definition. In fact, Black's Law
3 Dictionary has changed its definition of fugitive to
4 include people like Ms. Bescond who evade arrest and
5 refuse to submit to prosecution.

6 There aren't any Second Circuit cases after
7 **Finkelstein** that use the definition the defendant
8 advances. It's just not the definition that this circuit
9 has accepted. The definition of fugitive that this court
10 accepted that fits with the logical conception of what a
11 fugitive is is that if a person refuses to come to the
12 United States when they have been charged, knowing they
13 have been charged, they are a fugitive and that's what we
14 have here.

15 This broader definition of fugitive, not only is
16 it the logical choice, but it's the one that fits with the
17 purposes of the fugitive disentitlement doctrine. That
18 doctrine is grounded on the, quote, impropriety of
19 permitting a fugitive to pursue a claim in federal court
20 where he might claim a benefit while ignoring the same --
21 that's, quote, grounded on the impropriety where he might
22 accrue a benefit while at the same time avoiding an action
23 of the same court that might sanction him, end quote.

24 That definition of fugitive that includes people
25 that refuse to come to the United States fits with that

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1 understanding where the fugitive disentitlement doctrine
2 is all about and indeed all four fugitive disentitlement
3 policy considerations apply squarely here in favor of not
4 allowing the defendant to have this motion heard.

5 First, the court should consider the
6 enforceability of its decision, and the law in that
7 respect is clear that courts don't have any interest in
8 issuing decisions that might give a defendant a benefit
9 without the ability to compel that defendant to submit to
10 an adverse ruling. That's what we have here. The
11 defendant's trying to take the good without suffering any
12 of the bad.

13 There should also be a penalty for flouting the
14 judicial process and related to that a discouragement of
15 flights from justice. I see both of those essentially as
16 relate here in that if motions are allowed like this it
17 sets a dangerous precedent where then any individual who
18 wants to try their hand can run for Mexico, run for
19 Canada, catch the first flight for Amsterdam, sit for --
20 where they can't be touched for a while, lob in motions
21 from abroad and hopefully one connects and wait until they
22 get the rules to decide what they do next. That
23 undermines the power of this court.

24 Also, Ms. Bescond's absence does prejudice my
25 case. Every day that we sit here not finishing this case,

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1 not bringing it to trial, not bringing it to sentencing my
2 evidence gets older, my facts get older, my prosecution
3 becomes more difficult and more stale. That's a very real
4 prejudice.

5 Even if we ignore all that and get to the
6 substance of the motion, which we shouldn't, your Honor,
7 because defendant is a fugitive, the defendant's motion
8 fails completely on the substance, and here's why.

9 The defense is trying to create a due process
10 right that fundamentally does not exist. In doing this
11 they are conflating some of the case law. I want to
12 explain a couple of things, if I may, first. A related
13 issue but a separate issue from due process is whether
14 this is an extraterritorial or domestic application of the
15 statute under which Ms. Bescond is charged in this case,
16 that's 7 U.S.C. 13, and that statute criminalizes causing
17 the transmission of false market data in interstate
18 commerce that could affect the price of a commodity in the
19 United States.

20 What we have here is a domestic application, not
21 an extraterritorial application because the defendant's
22 conduct in transmitting information into the United States
23 goes to one of the core focuses of the Commodities
24 Exchange Act and in **RJR Nabisco** the Supreme Court was
25 clear if a crime -- if the conduct of a crime goes

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1 directly to the core focus of the statute it's a domestic
2 crime not an extraterritorial crime.

3 Here the defendant's actions went to the core
4 focus of the CEA which is to protect market integrity, to
5 discourage manipulation and securities fraud because she
6 submitted false data that affected the price of a
7 commodity. It couldn't be a much more straightforward
8 connection to that core purpose. So it's a domestic
9 application.

10 Because it's domestic, we don't have to do the
11 nexus analysis to determine whether it's a domestic or
12 extraterritorial application. That's the second prong of
13 **RJR Nabisco**, but certainly there has to be some nexus to
14 the United States and that's a due process concern, but
15 all that requires is enough of a nexus between the
16 defendant and the United States that the prosecution is
17 not fundamentally unfair or arbitrary. That's it.

18 Defense tries to leap from that to this far
19 greater point saying that, while actually what **Al Kassar**
20 says is due process requires that the aim of the defendant
21 be to harm someone in the United States. That's been
22 rejected every which way. That was rejected squarely by
23 the **Hayes** court in the magistrate judge's decision which
24 is at 99 F.Supp 3d 409, and there's a pinpoint cite at 422
25 where that judge in the same **Hayes** case we were discussing

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1 earlier, a prior magistrate order says that aim is simply
2 not the proper standard for due process. That court
3 rejected exactly the argument the defendant is trying to
4 make here.

5 In doing so, the court referenced United States
6 v Yousef which is 2010 Westlaw 3377499 which states that a
7 finding of substantial intended effect in the
8 United States is sufficient but it's not necessary, and
9 you have **Mostafa** which defense cites at 965 F.Supp 2d 459,
10 mentions specific intent to harm Americans is not what the
11 law requires for due process. And the **Ali** case you cited
12 mentions **Al Kassar**'s characterization tells us when a
13 nexus to the United States exists, but not when it's
14 absent.

15 Their argument has been completely rejected and,
16 as a matter of case procedure it wouldn't make much sense
17 because when defense is talking about aim, what they are
18 essentially talking about is intent, knowledge, these are
19 trial issues. If I can't prove that Ms. Bescond intended
20 the consequences of what she did, intended the
21 consequences I allege in the action, she should be
22 acquitted but that's something that should be decided in
23 this courtroom in front of a trial and not on pretrial.

24 That's all I have on those points, your Honor.

25 THE COURT: The only thing I'm going to need you

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1 to get into is statute of limitations.

2 It's one of those points you think you should
3 get it right from the beginning on these arguments based
4 on **Hayes** and the arguments you have just presented now
5 about who is a fugitive and when you have fugitive
6 disentitlement, but what about the statute of limitations?

7 Can you brief it or do it verbally?

8 MR. DUREE: I can tell you verbally and I'm also
9 very happy to send you the court filings and that type of
10 thing we filed.

11 It's simple. Before the statute of limitations
12 ran, and I'm testing myself now, I believe it was March
13 2016, we got tolling orders in both the Southern District
14 of New York and in Connecticut. We didn't get one here,
15 but we don't need a tolling order in every district where
16 the case might be charged. One tolling order in one
17 district is sufficient to toll the statute of limitations.

18 We got those tolling orders.

19 THE COURT: You think it was March 26th?

20 MR. DUREE: I don't know the date offhand, your
21 Honor, but it was March of 2016, I believe.

22 THE COURT: Okay.

23 MR. DUREE: I don't want to speak out of turn.

24 THE COURT: Okay.

25 I'll wait for that.

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1 MR. DUREE: I'll get you those documents.
 2 In any case, we thought and anticipated this
 3 issue. We specifically got the tolling orders prior to
 4 the expiration of the five-year statute of limitations.
 5 THE COURT: Thank you.
 6 I don't think I have any other questions.
 7 MR. SHTASEL: Your Honor, can I respond to just
 8 a couple things?
 9 THE COURT: Sure.
 10 MR. SHTASEL: I appreciate your patience, but
 11 these are extremely complicated and unusual issues, so I
 12 want to make sure that at least our position is clear.
 13 I'll go in the order that Mr. Duree just went.
 14 On the fugitive issue, essentially what Mr. Duree does is
 15 he says things and says it's supported in the case law,
 16 but when you go to their brief and try to find it it's not
 17 there. For example, Mr. Duree says, well, it's clear that
 18 Ms. Bescond is, quote, actively resisting arrest. She's
 19 living in her home where she has lived for 50 years.
 20 If Mr. Duree's definition was correct, every
 21 single foreign defendant is a fugitive, every single one.
 22 We wouldn't have the need for any of this case law. We
 23 wouldn't need a fugitive disentitlement doctrine. Every
 24 one would be a fugitive merely because they don't
 25 voluntarily get on a plane. We don't know what steps the

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1 government took to extradite. He takes the position she
 2 hasn't gotten on the plane so she's a fugitive.
 3 Then they says let's ignore **Finkelstein**. It's
 4 just meaningless semantics. Let's modernize what our
 5 definition is. If the Second Circuit wants to modernize
 6 what the common law definition is, it can. Just as, by
 7 the way, Congress did with respect to civil forfeiture.
 8 There they specifically passed a statute that said
 9 fugitives will be treated -- will be understood
 10 differently than in the context of the common law. That
 11 is only applicable to civil forfeiture cases, not here.
 12 There is no law -- the government can't just say, we wish
 13 the definition were broader to include every single
 14 foreign defendant. That's not what the law is.
 15 The reliance on **Eng** that Mr. Duree just made
 16 now, first of all, let's not forget **Eng** was decided years
 17 before **Finkelstein** and before **Collazos**. **Eng** the facts are
 18 very unclear as to whether the defendant had left the
 19 United States because it uses the language of failed to
 20 return. There are no facts in **Eng** that talk about his
 21 citizenship, or if he committed the crimes in the
 22 United States. **Eng**, which is certainly decided well
 23 before **Finkelstein**, doesn't really help the government at
 24 all because it uses that language of return, which is not
 25 applicable here.

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1 Ms. Bescond was never --
 2 THE COURT: Was never here.
 3 MR. SHTASEL: -- committing crimes in the
 4 United States.
 5 Briefly on the four factors, if your Honor found
 6 that she is a fugitive, we ask that you apply the doctrine
 7 to find that in your discretion she is not to be
 8 prohibited from making these applications. On the core
 9 issue is the government, the first factor is if her motion
 10 is denied, is she sort of scot-free and the answer is no.
 11 She is still under indictment and under indictment means,
 12 as the government says, that she can be arrested, detained
 13 if she tries to travel, the burdens are still there even
 14 if your Honor denies the motion.
 15 But she should at least be allowed the chance to
 16 make the motion. She is not flouting American law. She
 17 is living in her home.
 18 THE COURT: Maybe the government will give her a
 19 ticket to come here and face the charges and give her all
 20 the discovery she wants.
 21 MR. SHTASEL: Your Honor, that's the point and
 22 **Hijazi** says it the best, which is that a foreign defendant
 23 is simply in a different position than a domestic
 24 defendant who committed the crimes here and fled the
 25 jurisdiction as hiding out in Brooklyn.

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1 She shouldn't have to pay that price. That's
 2 why there are cases that allow her to make these
 3 challenges. She may lose them, but she should be allowed
 4 to make them.
 5 On the due process, first of all, the aim test
 6 is the law. It is shocking, frankly, to hear Mr. Duree
 7 get up and say that **Al Kassar** has been rejected. Who does
 8 he say rejected it? The **Hayes** case. The **Hayes** case is a
 9 Southern District of New York case. The Southern District
 10 of New York doesn't get to reject what the test that the
 11 Second Circuit has said, at least as far as I understand,
 12 that triangle that we learned about in civics class.
 13 I mean, the idea that he would get up and say,
 14 oh, follow a Southern District case that rejects the
 15 Second Circuit case suggests a sort of -- a degree of
 16 desperateness in their argument. On the aim test I want
 17 to be clear, what the aim as it says in the indictment,
 18 this isn't a question of Mr. Duree saying I'll get up and
 19 prove it at trial. This is what the test says, look at
 20 what the indictment says and the indictment says the aim
 21 was to protect the reputation, and remember, this is --
 22 the aim as defined in the indictment was in making
 23 submissions that would make the bank in the eyes of the
 24 senior male executives look better than other banks.
 25 It had nothing to do with trying to fix rates on

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1 the Chicago Mercantile Exchange and, therefore, it's a
2 critical, critical point to focus on what the Second
3 Circuit language is.

4 I want to make two other points. On the issue
5 of your Honor asked about the domestic application, and I
6 want to just read something from the **RJR** Supreme Court
7 case because under **RJR**, the government is still out of
8 luck. Here's why.

9 First of all, as I said, there is no authority
10 that says you don't apply the nexus test if it's a
11 domestic application. But here's what **RJR** said. It says,
12 if the conduct relevant to the statute's focus occurred in
13 the United States, then the case involves a permissible
14 domestic application, even if other conduct occurred
15 abroad.

16 But then it goes on to say, but, if the conduct
17 relevant to the focus occurred in a foreign country, then
18 the case involves an impermissible extraterritorial
19 application, regardless of any other conduct that occurred
20 in US territory. So when you look at that but language,
21 that's what we have here. The conduct relevant, even to
22 what Mr. Duree says, the focus of the statute is, occurred
23 in a foreign country. There is no disputing that. Every
24 act that Muriel Bescond took was in France.

25 So, therefore, under **RJR**, this would constitute
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1 an impermissible extraterritorial application. I will
2 submit this is not something that we spent time in our
3 brief on and if your Honor would like more on that
4 subject, we are happy to supplement our briefing, if your
5 Honor will permit, on that subject.

6 Last, statute of limitations. The government
7 basically has in its brief and even today kind of taking
8 the position, just trust us. Just trust us. We know what
9 her aim really was even though it's not what we said and
10 we have acted fairly and on the selective prosecution
11 trust us. You know, we had our reasons. That's not the
12 standard, trust us. The standard is what can you
13 demonstrate from the standpoint of evidence?

14 Now, we know the law says that if we establish,
15 and it's undeniable that the last act in the indictment is
16 dated October 2011, it's a five-year statute of
17 limitations, no dispute about that. No dispute that the
18 indictment was returned in August of 2017, more than five
19 years from the last act in the indictment. On its face
20 there is no question that the government has not met the
21 statute of limitations. The Supreme Court says under
22 those circumstances, the government has the burden of
23 showing that it did satisfy the statute because of some
24 tolling or other exception.

25 Now, in their brief, again, showing a degree of
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1 arrogance that somewhat surprises me, the government said
2 we are not going to bother answering because we are so
3 sure we are going to win on this fugitive thing we'll tell
4 you later, your Honor, if you are interested. The time to
5 do it was seven months ago when the motion was made, not
6 today.

7 But even today they have met no burden. They
8 have represented to your Honor that they obtained a
9 tolling order, but let's break that down what that means.

10 THE COURT: Right.

11 MR. SHTASEL: Section 3292 of Title 18 USC says:

12 If the government is seeking foreign evidence
13 from a foreign country, that it can apply to a court and
14 it can say, your Honor, we need more time because it takes
15 longer to get documents from a foreign government than it
16 would if we were just using our normal subpoena power in
17 the United States.

18 If the government makes an adequate showing the
19 court may enter a tolling order. The tolling order on
20 almost all instances doesn't then tell you if you have met
21 the statute of limitations because Section 3292 goes on to
22 say, how do you then calculate the statute? And in
23 simplest terms it says, okay, government. You now have
24 permission to go out and seek foreign documents. Make
25 your request. If you make your request on day one, and

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1 the foreign government responds in 60 days with what's
2 called final action, then you have got an additional 60
3 days beyond the five years you would otherwise have and
4 that's a very simple example.

5 In this case we know there were multiple
6 requests, but we haven't seen all of them. We don't know
7 at all what the French government responded, and so we are
8 not -- and your Honor, frankly, is not in a position to
9 determine whether when you add up the time between request
10 and response by the foreign government, whether, in fact,
11 the government here has actually brought the charges
12 within the relevant statute of limitations plus whatever
13 time they are given under 3292. We don't know.

14 We have reason to believe, I will tell you now,
15 that there were requests made of the foreign government
16 that were improper requests.

17 THE COURT: I don't think I want to get into
18 that.

19 MR. SHTASEL: Right.

20 THE COURT: But continue.

21 MR. SHTASEL: Meaning that they shouldn't be
22 allowed any extension of time for an improper request.

23 So the point is this, and we showed you in our
24 brief in the **Manifort** case, this issue came up, the
25 government does what it's supposed to do. It says here's

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1 the documents. This shows we got the order, here's what
2 it was based on, here is when we made the request, here is
3 when the response. They did nothing except stand up and
4 say trust us, and, your Honor, that's insufficient.

5 We believe if your Honor concludes that we have
6 the right to be here in the first place, the government
7 has waived, has waived by their failure to respond at all,
8 both to our brief and in the ensuing seven months and even
9 today before your Honor can't come forward with evidence
10 that enough is enough, and that the indictment should be
11 dismissed on those grounds alone.

12 THE COURT: Thank you.

13 MR. SHTASEL: Thank you for all your time, your
14 Honor.

15 THE COURT: Very briefly because I am going to
16 give you an opportunity, Mr. Duree, to put your arguments
17 in a brief.

18 MR. DUREE: Thank you, your Honor.

19 Very briefly on the statute of limitations
20 issues Mr. Shtasel raises. It's disappointing to me these
21 are the arguments he's making. It seems deeply holy
22 disingenuous and I want to explain why he talks about the
23 government doing the right thing in the **Manifort** case and
24 giving him the information.

25 The government followed through on its discovery
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1 obligations because the defendant did the right thing
2 which is show up. I have all -- he's -- just about every
3 word that came out of his mouth here was based on
4 completely wild speculation about what maybe we did or
5 maybe we didn't do or maybe the French did or maybe they
6 didn't do or things like that.

7 The fact is I have discovery. I have tolling
8 orders. I am confident that I can prove that my case is
9 within the proper statute of limitations, and the second
10 Ms. Bescond comes to the United States and triggers my
11 Rule 16 obligations I'm very happy to provide her with all
12 that information.

13 But defense is trying to grossly contort
14 criminal procedure and suggest that his client doesn't
15 have to show up. She can do whatever she wants, but
16 meanwhile he's going to make these baseless speculative
17 arguments and I am then going to have to engage in some
18 sort of reverse discovery or assuage his concerns without
19 her being here.

20 THE COURT: Just put the basic information in
21 your response and I'll consider it.

22 MR. DUREE: Thank you, your Honor.

23 THE COURT: How long are we looking at to get
24 the additional paperwork in for the court to render a
25 decision?

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1 MR. DUREE: How soon would your Honor like it?

2 THE COURT: Three weeks.

3 MR. DUREE: I can do that, your Honor.

4 THE COURT: What else did you want to add,
5 Mr. Shtasel?

6 MR. SHTASEL: In terms of additional briefing?

7 THE COURT: I don't think you need much, really.
8 You have your arguments here.

9 MR. SHTASEL: Maybe we reflect and decide we
10 don't.

11 If we do, it would be very, very short on the
12 one issue from the **RJR** case I brought up today.

13 THE COURT: All right.

14 MR. SHTASEL: Thank you, very much.

15 THE COURT: You are welcome and you will get
16 that in in three weeks.

17 THE CLERK: Three weeks is January 7th.

18 THE COURT: You don't need any more time for the
19 holidays do you?

20 MR. DUREE: No, your Honor.

21 To be very clear, so I comply with exactly what
22 you want, dates and the attachments about when our tolling
23 orders were issued.

24 THE COURT: Right.

25 MR. DUREE: Thank you, your Honor.

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1 MR. SHTASEL: Your Honor, two points on that.
2 One, I assume we will get copies on that as
3 well.

4 THE COURT: Of course I'm going to let you have
5 copies.

6 MR. SHTASEL: Second of all -- well, they take a
7 position we shouldn't be seeing things -- also I would ask
8 your Honor ask for not just the tolling orders, but the
9 request and responses from the French authorities so that
10 you can determine under 3292 whether, in fact, the
11 government complied with its obligation.

12 THE COURT: I don't think I have to go that far.
13 What's the government's position?

14 MR. DUREE: Your Honor, I'm opposed to that.
15 That's information they can get when she comes here.
16 That's not relevant.

17 MR. SHTASEL: There is no way to determine it
18 from the tolling order itself.

19 I would bet that the tolling order will say you
20 can go get documents subject to 3292, but that doesn't
21 tell you whether the government met the time restrictions
22 for filing the indictment even with the additional time.
23 That's measured specifically under the statute by when was
24 the request made, when was final action taken, add it up
25 and see if it works.

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1 So if you don't have the added up part, you
2 won't be able to determine from the face of the tolling
3 order whether the statute was met.

4 THE COURT: The government's response to that.

5 MR. DUREE: Your Honor, perhaps I can make this
6 really easy.

7 We got a final response from the French about a
8 year ago, I think in either December or January. This
9 was -- it was not until after our indictment issued that
10 the French finally told us what they were going to do with
11 our remaining requests which were still important to us.
12 I think that should resolve it right there. We didn't get
13 an answer until after we indicted.

14 THE COURT: That makes it simple.

15 Have a good day, folks, and I look forward to
16 your additional papers.

17 MR. SHTASEL: Thank you, your Honor.

18 MR. DUREE: Thank you, your Honor.

19 (The matter concluded.)
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